

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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LEHMAN BROTHERS HOLDINGS,
INC.,

2:11-CV-00379-PMP-LRL

Plaintiff,

ORDER

vs.

RMS & ASSOCIATES, *et al.*,

Defendants.

Before the Court for consideration are Plaintiff/Counterdefendant Lehman Brothers Holding, Inc.'s Motion to Dismiss Negligence Claim in RMS & Associate's Counterclaim (Doc. #38), and Third Party Defendant Aurora Loan Services' Motion to Dismiss the Third Party Complaint of RMS & Associates (Doc. #39). Having considered the arguments of counsel presented at the hearing conducted December 20, 2011, the Court finds that Plaintiff/Counterdefendant Lehman Brothers' Motion to Dismiss (Doc. #38) should be granted and that Third Party Defendant Aurora Loan Services' Motion to Dismiss Third Party Complaint (Doc. #39) should be granted in part and denied in part.

Specifically, the Court finds that with respect to the First Claims for Relief for Negligence set forth in RMS & Associates Counterclaim and Third Party Complaint, whether Nevada law or New York law applies, the result is the same.

1 RMS & Associates' Negligence Claims are barred by the Economic Loss Doctrine
2 recognized and applied by the law in both jurisdictions.

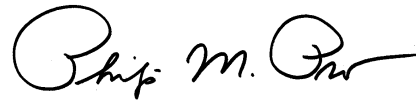
3 The Court further finds that RMS & Associates' Third Claim for Relief for
4 Contribution and Fourth Claim for Relief for Indemnity asserted against Third Party
5 Defendant Aurora Loan Services must be dismissed because they are not actionable
6 claims, but are instead potential forms of relief prayed for in RMS & Associates'
7 Third Party Complaint.

8 **IT IS THEREFORE ORDERED** that Plaintiff/Counterdefendant Lehman
9 Brothers Holdings' Motion to Dismiss Negligence Claim in RMS & Associates'
10 Counterclaim (Doc. #38) is **GRANTED**.

11 **IT IS FURTHER ORDERED** that Third Party Defendant Aurora Loan
12 Services' Motion to Dismiss RMS & Associates' Third Party Claims for Negligence
13 (First Claim for Relief), Contribution (Third Claim for Relief), and Indemnity
14 (Fourth Claim for Relief), (Doc. #39) are **GRANTED**.

15 **IT IS FURTHER ORDERED** that Aurora Loan Services' Motion to
16 Dismiss RMS & Associates' Second Claim for Breach of the Implied Covenant of
17 Good Faith and Fair Dealing is **DENIED**.

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19 DATED: December 22, 2011.

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PHILIP M. PRO
23 United States District Judge
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